

# CDFW Protocols and Code Considerations for SLO County



October 26, 2016 SLO County Biological Report Workshop

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# Topics

- **Scientific Collecting Permits**
- **Botanical Inventory Methods**
- **State Rare Plants-Take Permit Process**
- **Erosion Control Mesh and Wildlife**
- **New CESA fines and application fees**
- **CDFW Contacts for SLO County**





# Scientific Collecting Permits



# Scientific Collecting Permits

- do not authorize you to move animals out of the way of construction
- do authorize you to take, collect, capture, mark, or salvage, **for scientific, educational, and non-commercial propagation purposes** (Fish and Game Code Section 1002 and Title 14 Sections 650 and 670.7)





# Botanical Inventories





# The Protocol...on CDFW Website

Guidelines for Assessing th... x +

https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=18959&inline=1 po County planning kit fox →

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## Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Natural Communities

State of California  
CALIFORNIA NATURAL RESOURCES AGENCY  
Department of Fish and Game  
November 24, 2009<sup>1</sup>

### INTRODUCTION AND PURPOSE

The conservation of special status native plants and their habitats, as well as natural communities, is integral to maintaining biological diversity. The purpose of these protocols is to facilitate a consistent and systematic approach to the survey and assessment of special status native plants and natural communities so that reliable information is produced and the potential of locating a special status plant species or natural community is maximized. They may also help those who prepare and review environmental documents determine when a botanical survey is needed, how field surveys may be conducted, what information to include in a survey report, and what qualifications to consider for surveyors. The protocols may help avoid delays caused when inadequate biological information is provided during the environmental review process; assist lead, trustee and responsible reviewing agencies to make an informed decision regarding the direct, indirect, and cumulative effects of a proposed development, activity, or action on special status native plants and natural communities; meet California Environmental Quality Act (CEQA)<sup>2</sup> requirements for adequate disclosure of potential impacts; and conserve public trust resources.

### DEPARTMENT OF FISH AND GAME TRUSTEE AND RESPONSIBLE AGENCY MISSION

The mission of the Department of Fish and Game (DFG) is to manage California's diverse wildlife and native plant resources, and the habitats upon which they depend, for their ecological values and for their use and enjoyment by the public. DFG has jurisdiction over the conservation, protection, and management of wildlife, native plants, and habitat necessary to maintain biologically sustainable populations (Fish and Game Code §1802). DFG, as trustee agency under CEQA §15386, provides expertise in reviewing and commenting on environmental documents and makes protocols regarding potential negative impacts to those resources held in trust for the people of California.

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# When Surveys are Warranted

- Natural (or naturalized) vegetation occurs on the site, and it is unknown if special status plant species or natural communities occur on the site, and the project has the potential for direct or indirect effects on vegetation; or
- Special status plants or natural communities have historically been identified on the project site; or
- Special status plants or natural communities occur on sites with similar physical and biological properties as the project site.



# Purpose of Botanical Inventories

To answer the question: are special status plants, natural comms. or spp. of local concern present?



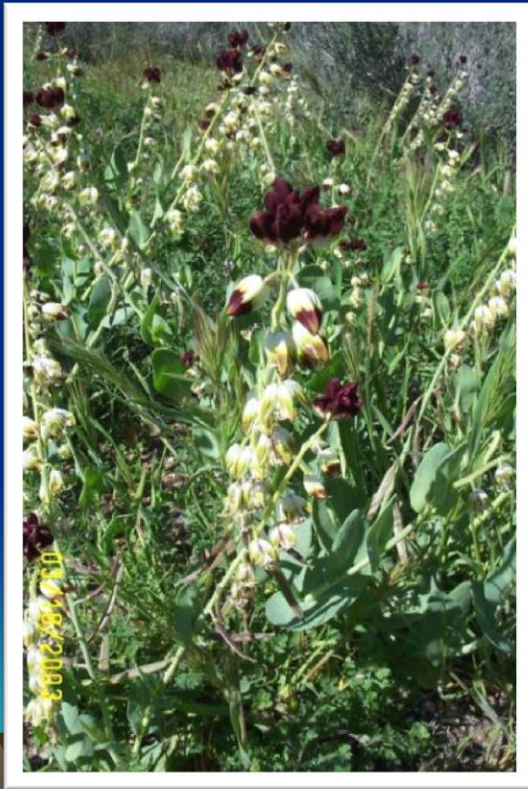


# Survey Method Basics

- “floristic in nature” = ID all species on site (not a “focused survey”)
- Dates of surveys
- List all spp. observed
- Use reference sites
- “Conducted using systematic field techniques in all habitats of the site to ensure a thorough coverage of potential impact areas...”
- Survey all affected areas



# Purpose of Botanical Inventories (cont'd)



- Provide the CEQA baseline for the Lead Agency
- Develop measures to avoid, minimize, and compensate for impacts as CEQA requires
- Determine State and Federal Take Permit Requirements



# Some Local Cases Congdon's tarplant

- Loves garbage
- Blooms very late
- Many surveyors not surveying late enough
- Use a reference site
- Centromadia, Deinandra, etc. probably missed on many projects





# Some Local Cases dwarf calycadenia



- Road shoulders
- Annual grassland
- Graded areas



# Common Issues

- Single visit, single species survey
- Surveys out of season
- Inadequate survey area
  - Consider all direct and indirect effects, e.g. fire clearance, road improvements, utility lines
  - Survey disturbed areas
- predictive, e.g.
  - “annual grasslands not suitable”
  - “grazing eliminates potential”
  - “not within known elevation limits”
  - “CNNDDB does not document any occurrences...”



# Common Issues

- Surveys deferred to “pre-construction”, no CEQA baseline established
  - §15126.4 precludes formulation of mitigation measures after project approval
  - *San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645 struck down mitigation measures which required formulating management plans developed in consultation with state and federal wildlife agencies after project approval.





- courts have repeatedly not supported conclusions that impacts are mitigable when essential studies, and therefore impact assessments, are incomplete (*Sundstrom v. County of Mendocino* (1988) 202 Cal. App. 3d. 296; *Gentry v. City of Murrietta* (1995) 36 Cal. App. 4th 1359; *Endangered Habitat League, Inc. v. County of Orange*(2005) 131 Cal. App. 4th 777).



- Sets up project for delays if spp. are found
- Surveys often never completed if deferred to “pre-construction”
- typically too late to change design and unlikely that construction will be timed to allow surveys



# Locally Significant Species Examples

- rare or uncommon in a local context such as within a county or region (CEQA §15125 (c))



*Calamagrostis nutkaensis*

*Allium unifolium*

*Clarkia rubicunda*





# CNPS Botanist Certification

- Certified Field Botanist
- Certified Consulting Botanist
- Maybe the County can consider this as a requirement?



# State Rare Plants



# Take Prohibition

## (DFG Code § 1908)

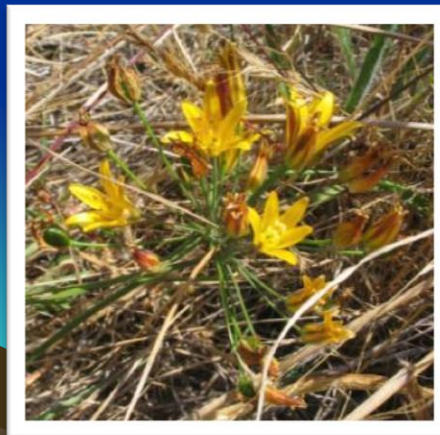
- No take except as otherwise provided in code.
- Exceptions in § 1913 are for
  - timber operations
  - agriculture
  - mining
  - fire control
  - required fed or state mining assessments





# New Take Permit Process for SR Plants

- DFG Code § 1907 allows F&G Commission to create take regulations.
- Did so in 2014, created 14 CCR § 786.9
- CDFW now can permit take of SR plants
  - permit process mirrors CESA process



# State Rare Spp. in SLO

(14 CCR § 670.2)

- *Chlorogalum purpureum* var. *reductum* (Camatta Canyon amole)
- *Sanicula maritima* (adobe sanicle)
- *Nemacladus twisselmannii* (Twisselmann's nemacladus)
- *Sidalcea hickmanii* ssp. *anomala* (Cuesta Pass checkerbloom)
- *Clarkia speciosa* ssp. *immaculata* (Pismo clarkia)



- *Pedicularis dudleyi* (Dudley's lousewort)
- *Eriogonum twisselmannii* (Twisselmann's buckwheat)
- *Ceanothus hearstiorum* (Hearsts' ceanothus)
- *Ceanothus maritimus* (maritime ceanothus)
- *Bloomeria humilis* (dwarf goldenstar)
- maybe others???





# Erosion Control Mesh

- Spec only natural-fiber mesh
- “Photodegradable” plastic meshes persist and kill wildlife
- Natural-fiber mesh just as effective, doesn’t kill, and degrades in a few seasons



# Senate Bill 839: CESA ITP Application Fees Required as of September 13, 2016

Permit Type	Project Cost	Mitigate at CDFW-Approved Bank?	Fee Required <sup>[1]</sup>
Consistency Determinations	NA	Yes	\$6,000.00
	NA	No	\$7,500.00
Incidental Take Permits	≤\$100,000.00	Yes	\$6,000.00
		No	\$7,500.00
	\$100,000.00 - \$500,000.00	Yes	\$12,000.00
		No	\$15,000.00
	≥\$500,000.00	Yes	\$24,000.00
		No	\$30,000.00
Incidental Take Permits Minor Amendment	NA	NA	\$7,500.00
Incidental Take Permits Major Amendment	NA	NA	\$15,000.00
Complexity Fee	NA	NA	≤\$10,000.00 <sup>[2]</sup>

<sup>[1]</sup>Fees are based on amounts enrolled in Senate Bill 839 (approved by Governor on September 13, 2016).

<sup>[2]</sup>When applying the complexity fee, the total amount of all fees cannot exceed \$35,000.00

# Senate Bill 839: CESA Violation Fines as of September 13, 2016

- Punishment for violation of Section 2080 (listed spp.) or 2085 (candidate spp.) is a fine of not less than twenty-five thousand dollars (\$25,000) or more than fifty thousand dollars (\$50,000) for each violation or imprisonment in the county jail for not more than one year, or by both that fine and imprisonment.
- Fine for each individual taken.





# Conservation Banks Needed

- Pismo Clarkia
- Giant kangaroo rat



# CDFW Contacts for SLO Cnty.

- Law Enforcement: 1-888-334-2258
- CEQA/CESA: Brandon Sanderson (805) 594-6141
- Renewable Energy: Lisa Gymer (559) 243-4014 x238
- Streambed Alteration: Charles Walbridge (559) 243-4014 x352
- Wildlife Management and Ecological Reserves: Bob Stafford (805) 528-8670
- Conservation/Mitigation Banking: David Hacker (805) 594-6152
- emails are [first.last@wildlife.ca.gov](mailto:first.last@wildlife.ca.gov)



# Thanks and see you later.



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